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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the)
Commission's Rules to)
Establish New Personal)
Communications Services)

GEN Docket No. 90-314

To: The Commission

**UTILITIES TELECOMMUNICATIONS COUNCIL
REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION**

Pursuant to Section 1.429(g) of the Commission's Rules, the Utilities Telecommunications Council (UTC) hereby submits the following reply to the comments filed on UTC's "Petition for Reconsideration" of the Second Report and Order (Second R&O), GN Docket No. 90-314, 8 FCC Rcd 7700 (1993), in the above-captioned matter.^{1/}

I. INTRODUCTION

UTC, as the national representative on communications matters for the nation's electric, gas, and water utilities, and natural gas pipelines, has been an active participant in this proceeding and the related proceedings dealing with the use of the 2 GHz band.

On December 8, 1993, UTC filed a petition requesting reconsideration of four aspects of the Second R&O: (1) spectrum

^{1/} These reply comments are timely filed in accordance with the specifications of FCC Rule Section 1.4(h) regarding the filing of responses to comments served by mail.

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allocations for private, internal emerging technology systems; (2) authorization of unlicensed PCS devices; (3) coordination and licensing of licensed PCS systems; and (4) service area definitions and technical rule corrections. Below, UTC addresses the comments filed in response to UTC's petition.

II. THE FCC SHOULD REDESIGNATE SOME PORTION OF THE SPECTRUM RESERVE FOR PRIVATE EMERGING TECHNOLOGIES

In its petition, UTC noted that the FCC's decision to allocate all of the spectrum for PCS to commercial services is not in the public interest. Utilities, public safety/public service entities and core industries have a current internal need for the advanced mobile/portable communications capabilities that carrier-provided PCS cannot provide. Commenters representing private users agree with UTC that commercial PCS is inadequate to meet the specialized requirements of public safety entities, public service utilities and core industries.

Consistent with UTC, the Association of Public-Safety Communications Officials-International, Inc. (APCO) filed a "Petition for Reconsideration" requesting that a portion of the 2 GHz emerging technologies band be reserved for public safety and other privately licensed users of advanced communications services.^{2/} The American Petroleum Institute (API) supports the petitions of both UTC and APCO, noting that many of the critical telecommunications conducted by its members cannot be transferred

^{2/} APCO Petition for Reconsideration filed December 8, 1993, in GEN. Docket No. 90-314.

to public systems due to service reliability concerns.^{3/}

Moreover, as APCO notes, the PCS competitive bidding process, MTA/BTA service territories, and build-out requirements adopted in the Second R&O effectively preclude the development of private-use PCS systems from the spectrum allocated for PCS .^{4/}

A few potential commercial PCS licensees oppose the request for a separate allocation of spectrum to meet the advanced communications requirements of private users. American Personal Communications (APC) attempts to distort the record by mischaracterizing the petitions of UTC and APCO as constituting "last-minute" requests.^{5/} In point of fact, UTC raised the need for an allocation of emerging technology spectrum to meet private communications requirements at both the comment and reply comment stages of this proceeding.^{6/} A fact acknowledged by the FCC in the Second R&O but never addressed in its decision.^{7/}

In opposing an allocation of a portion of the "spectrum reserve" for private emerging technologies, APC, Sprint and MCI, all argue that the requests are unjustified. Each of these potential commercial PCS entrants proffers the same self-serving solution to meet the emerging technology requirements of public

^{3/} API, pp. 8-9.

^{4/} APCO, pp. 3-4.

^{5/} APC, p.19.

^{6/} UTC Comments and Reply Comments in response to Notice of Proposed Rulemaking (NPRM) in GEN. Docket No. 90-314, filed November 9, 1992, and January 8, 1993 respectively.

^{7/} Second R&O para. 44.

safety/public service and private industry -- purchase communications services from PCS licensees.^{8/}

The comments of these parties should be rejected. The vital need for a separate allocation of spectrum for private users is evidenced by the recent filing of a "Petition For Rulemaking" seeking an allocation of spectrum for the development of an "Advanced Private Communications Service" by a coalition representing the vast majority of licensees in the Public Safety, Industrial, and Land Transportation Radio Services."^{9/}

The Coalition of Private Users of Emerging Multimedia Technologies ("COPE") argues that this service would support communications systems designed to meet the unique needs of the private radio user community for advanced wireless imaging and decision processing/remote file access capabilities.

In direct contrast to the arguments of APC, Sprint and MCI, COPE points out there is a clear and compelling need for a separate allocation of spectrum to accommodate private emerging technology requirements that cannot be met by carrier-provided PCS systems. COPE details a number of important private emerging technologies that generic commercial PCS is unlikely to provide.

Nor, as suggested by Apple^{10/}, can the unique private communications requirements of COPE's membership be fully realized through the use of unlicensed PCS. The private

^{8/} APC, p. 20; Sprint, p. 5.; and MCI, p. 6.

^{9/} COPE Petition for Rulemaking, filed December 23, 1993.

^{10/} Apple, pp. 8-9.

technologies required by UTC and the membership of COPE cannot properly function under the low power limits, narrow bandwidth and other technical restrictions that are a necessary component of the FCC's rules for unlicensed PCS. More importantly, the inherently undisciplined environment of mass market consumer RF devices is incompatible with the critical needs of many private users, especially those involved in public safety and other critical safety-oriented activities. Even with a "spectrum etiquette," unlicensed operation does not provide the requisite level of discipline and certainty required for critical private radio communications.

Finally, Sprint's argument opposing an allocation of spectrum to meet advanced private communications requirements based on the fact that such an allocation would not provide auction revenue to the government, should be rejected. As UTC noted in its petition, Congress was explicit in its instructions in amending the Communications Act authorizing the use of auctions that "...the Commission may not base a finding of public interest, convenience and necessity solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding."^{11/} Thus, contrary to the suggestion of Sprint, the FCC must not base its PCS decision on the expectations of revenue, but rather, in order to meet its public interest standard.

^{11/} Omnibus Budget Reconciliation Act of 1993, Section 6002(j)(7).

III. CLARIFICATION OF UNLICENSED PCS DEPLOYMENT RULES IS NEEDED

A. The Definition Of "Coordinatable" Needs To Be Clarified

In its petition UTC noted that the definition of "coordinatable PCS device" is susceptible to widely varying interpretations due to the use of vague terms. UTC urged that these terms be clarified in order to more adequately protect incumbent microwave users. The sole objection to UTC's recommendation comes from UTAM. Significantly, UTAM does not dispute the ambiguity of these terms, but instead states that it "intentionally did not seek to define the requirements for coordinatable devices in greater detail out of a concern that the goal of encouraging as yet undiscovered uses of the PCS band could be frustrated."^{12/}

UTAM's concern is misplaced. A more precise definition of "coordinatable" would only serve to establish a clear distinction between unlicensed devices that are capable of being deployed prior to band clearing on a coordinated basis, and those that are not. The definition should not have an impact upon the general development of new unlicensed PCS. Moreover, UTAM evidences a misunderstanding of the role of coordination in the development of unlicensed PCS. The coordination of unlicensed PCS devices prior to band clearing is only to be used on a limited basis, in situations where it is clear that there will be no interference.

^{12/} UTAM, pp. 5-6.

B. UTAM's Responsibilities Should Be Better Defined

A number of commenters, including UTAM itself, agree with UTC's recommendation that the FCC clarify the responsibilities of UTAM.^{13/} As UTAM notes, the threshold determination of whether a device is coordinatable must reside with the Commission.^{14/}

Similarly, AAR supports UTC's request for clarification that UTAM will be held fully responsible for the installation and relocation of "coordinatable" unlicensed PCS devices at locations for which it has conducted coordination.^{15/} This responsibility must necessarily fall upon UTAM, because in the unlicensed PCS environment there will be no licensees against whom the FCC can enforce installation or relocation restrictions. If UTAM is unwilling to accept these fundamental responsibilities, the FCC should designate some other entity to manage the coordination and deployment of unlicensed PCS devices.

C. The Labelling Requirement Should Be Strengthened

Commenters agree with UTC's recommendation that the labeling requirement for unlicensed PCS devices should be strengthened. UTC therefore renews its request that the labelling requirement be amended to read as follows:

Pursuant to Federal Law, this equipment may
be operated only at location(s) specified by
UTAM, Inc. Call 1-800-XXX-XXXX for details.

^{13/} Association of American Railroads (AAR), pp. 7-8; Apple, p. 6; and UTAM, p. 3.

^{14/} UTAM, p. 3.

^{15/} AAR, p. 8.

IV. PCS COORDINATION AND LICENSING RULES SHOULD BE MODIFIED

A. PCS Facilities Should Be Individually Licensed

APC opposes UTC's recommendation that PCS base stations be individually licensed because such a requirement would conflict with Section 99.11 of the Rules.^{16/} APC raises no substantive argument against UTC's proposal, and does not address the fact that UTC's proposal is consistent with the requirements of Section 99.233, which is itself in conflict with Section 99.11. Therefore, the FCC should revise section 99.11 to clarify that although PCS licensees will be granted "blanket" licenses for each market and frequency block, separate applications and authorizations will be required for each base station.

B. Prior coordination Notices Should Be Required

Both AAR and API support UTC's recommendation that the FCC adopt prior coordination procedures, based on Section 21.100(d) of the FCC's Rules, for PCS-microwave coordination.^{17/} The adoption of such prior coordination requirements would ensure that all potential issues of microwave interference are resolved well in advance of PCS system licensing and deployment.

C. The FCC Should Adopt Its Own PCS Licensing Areas

A large number of commenters agree with UTC that the FCC should take steps to avoid the dilemma of using geographic definitions to which Rand McNally claims a copyright. As

^{16/} APC, p. 23.

^{17/} AAR, p. 4; and API, p. 3.

indicated by Rand McNally's comments, this is not just a theoretical concern. Rand McNally indicates its intent to "expend significant resources to defend and police" its copyrights.^{18/} Therefore, UTC continues to recommend that the FCC adopt its own definitions of PCS licensing areas, based on an independent analysis of all relevant demographic information.

The only opposition to UTC's recommendation is raised by MCI, which mistakenly believes that UTC's proposal would require the commencement of a new proceeding. No such new proceeding would be required because the FCC has ample record before it to make such a decision. As an alternative, UTC supports Telocator's recommendation that PCS licensing areas be restated in terms of the counties within each BTA and MTA.

V. CONCLUSION

In making a proper analysis of its Communications Act obligations, the FCC should allocate a portion of the spectrum reserve for the development of private emerging technologies. The FCC should also: (1) clarify the responsibilities of UTAM; (2) adopt measures to ensure that the early deployment of unlicensed PCS devices does not jeopardize the safe operation of microwave facilities; (3) provide for prior coordination and licensing of PCS facilities; and (4) clarify the PCS licensing area definitions in order to avoid Rand McNally's claims of copyright.

^{18/} Rand McNally, p. 2.

WHEREFORE, THE PREMISES CONSIDERED, the Utilities
Telecommunications Council respectfully requests the Commission
to take actions consistent with the views expressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Janice Jones, a secretary with the Utilities Telecommunications Council, hereby certify that I have caused to be sent by first class mail, postage prepaid, this 19th day of January, 1994, a copy of the foregoing to each of the following:

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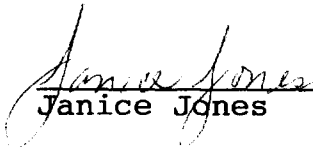
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